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Nos. 07-984 and 07-990

IN THE
Supreme Court of the United States

COEUR ALASKA, INC.,
Petitioner,
v.
SOUTHEAST ALASKA CONSERVATION COUNCIL, ET AL.,
Respondents.

STATE OF ALASKA
Petitioner,
v.
SOUTHEAST ALASKA CONSERVATION COUNCIL, ET AL.,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

SUPPLEMENTAL REPLY BRIEF FOR RESPONDENT GOLDBELT, INC. IN SUPPORT OF PETITIONERS

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RULE 29.6 STATEMENT

The corporate disclosure statement included in Goldbelt's brief in support of petitioners remains accurate.

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SUPPLEMENTAL REPLY BRIEF FOR RESPONDENT GOLDBELT, INC. IN SUPPORT OF PETITIONERS

I. ARGUMENT

The Tlingit Indians, aboriginal owners and stewards of Berners Bay, are no more than a cipher in the anti-development calculus of the Sierra Club and its allies in this litigation. Goldbelt's half-finished dock at Cascade Point stands as a mute testimonial to the Sierra Club's determination to oppose, obstruct or delay any efforts by Goldbelt, Inc., to find a productive use for the lands Congress awarded the Tlingits more than a quarter century ago as partial recompense for the illegal seizure of their traditional homelands.

At no point in the arguments made to this Court has the Sierra Club assayed a defense of the Ninth Circuit's decision to vacate Goldbelt's 404 permit. Neither the Sierra Club nor the Ninth Circuit ever questioned the voluminous record and environmental findings compiled by the Corps of Engineers in support of Goldbelt's permit. The Sierra Club cavalierly expects this Court likewise to ignore that record and to adopt the facially erroneous assumption that Goldbelt's Cascade Point dock cannot fulfill its purpose of servicing the Kensington mine unless Coeur's challenged method of tailings disposal is upheld. The expectation violates every principle of administrative law, including the rule of *Pension Benefit Guaranty Corp. v. LTV Corp*., 496 U.S. 633, 646 (1990), that agency action should be reviewed on the basis of the record compiled in accordance with the authority of the permitting

agency, and not on the basis of some speculative future violation that may or may not occur.

Nearly lost in the sometimes-sophistical debate over which agency – the EPA or the Corps of Engineers – ought to have primary jurisdiction over disposal of Kensington mine tailings is the fundamental reality that Congress intentionally left many significant details of the Clean Water Act – including the definition of fill material – to be worked out by the two agencies through cooperative rule making and evaluation of permit applications. For nearly two decades, the two agencies have worked hand in hand to evaluate and determine an environmentally sound and preferable method of tailings disposal for the Kensington. Much of this work has been done, as Congress intended, through the application of the rigorous 404(b)(1) Guidelines. The result is a project whose environmental impacts, at the level of agency factual findings regarding mitigation, insignificance, and acceptability, never have been questioned.

The federal agencies, State of Alaska and Coeur have all made compelling arguments, which Goldbelt adopts, that the Clean Water Act clearly authorizes mine tailing disposal pursuant to a fill permit issued by the Corps of Engineers under Section 404 of the Act. If the statute leaves any room for doubt – and Goldbelt does not believe that it does – this is quintessentially a case in which the Court should defer to the unanimous position of every permitting agency charged by Congress with interpretation and administration of the Act.

Some two years ago, work on an environmentally sound project that had been providing hundreds of high paying jobs and contracting opportunities in a

region hard hit by the loss of jobs in government, logging and fishing was brought to a halt.[1] The consequences for Goldbelt's Tlingit Indian shareholders have been particularly devastating because of Coeur's Native-friendly hiring and training policies, and also because the Cascade Point dock was the first visible manifestation of the benefits Congress intended when it deeded Goldbelt lands in Berners Bay for economic development purposes.

II. CONCLUSION

For the foregoing reasons, considerations of both law and equity require the reversal of the Ninth Circuit's decision as to all parties and the reaffirmation of the 404 permits for the Kensington mine and Goldbelt's Cascade Point dock, as well as the Forest Service Record of Decision.

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[1] Ninth Circuit Court of Appeals entered judgment on May 7, 2007. In August of 2006, at the request of the Sierra Club, the Ninth Circuit issued an injunction pending appeal against further work on the Lower Slate Lake tailings storage facility. Work on other mine facilities, as well as the Cascade Point dock, continued until after the lower court's judgment vacating Goldbelt's permit, the Forest Service Record of Decision for Coeur's Plan of Operations, as well as Coeur's permit for the tailings storage facility.

Respectfully submitted.

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